

## 46 Am. Jur. 2d Judges § 185

American Jurisprudence, Second Edition | February 2022 Update

### Judges

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### IX. Disqualification to Act in Particular Case

#### C. Remedies and Procedure

#### 3. Motion for Disqualification and Affidavit

##### b. Affidavit of Prejudice

## § 185. When mere filing of affidavit of prejudice to disqualify judge disqualifies—Number of disqualifications

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

The number of judges who can be disqualified by the mere filing of an affidavit of prejudice is generally limited by statute to a specified number per party,<sup>1</sup> or per side,<sup>2</sup> regardless of the number of parties on each side.<sup>3</sup> Where coplaintiffs or codefendants have substantially adverse interests, however, it is considered as if there are more than two sides in the case.<sup>4</sup>

A challenge by an intervenor is not in addition to the total number of challenges accorded each side.<sup>5</sup>

Some courts have held that a party who has used up the available challenges may seek to disqualify another judge by specifying facts demonstrating prejudice.<sup>6</sup>

Where one change of judge is granted in an action, the right of a party to disqualify a judge is exhausted when a request for disqualification is honored without an affidavit.<sup>7</sup>

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### Footnotes

- 1 [American Buyers Life Ins. Co. v. Superior Court In and For Maricopa County](#), 84 Ariz. 377, 329 P.2d 1100 (1958); [Le Louis v. Superior Court](#), 209 Cal. App. 3d 669, 257 Cal. Rptr. 458 (5th Dist. 1989).

- 2                   Avital v. Superior Court, 114 Cal. App. 3d 297, 170 Cal. Rptr. 588 (2d Dist. 1981); State ex rel. Cline v.  
District Court of Fourth Judicial Dist. In and For Missoula County, 142 Mont. 278, 384 P.2d 490 (1963).
- 3                   U'Ren v. Bagley, 118 Or. 77, 245 P. 1074, 46 A.L.R. 1173 (1926).  
As to informal peremptory challenges, see § 179.
- 4                   Avital v. Superior Court, 114 Cal. App. 3d 297, 170 Cal. Rptr. 588 (2d Dist. 1981).
- 5                   Allman v. Potts, 140 Mont. 312, 371 P.2d 11, 92 A.L.R.2d 1104 (1962).  
As to intervenors' right to move for recusal, see § 167.
- 6                   Home Owner's Loan Corporation v. Stookey, 59 Idaho 267, 81 P.2d 1096 (1938); State v. Tapio, 432 N.W.2d  
268 (S.D. 1988).
- 7                   American Buyers Life Ins. Co. v. Superior Court In and For Maricopa County, 84 Ariz. 377, 329 P.2d 1100  
(1958).

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